IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 29461 of 2007(G)

OS.63/1999 of SUB COURT, OTTAPPALAM

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PETITIONER:

K.S.RAMACHANDRAN @ K S R.CHANDRAN,
AGED 73, S/O.SIVARAMA IYYER, KOTTIVATTATHIL
MADATHIL, MANNISSERY DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. KOMBY, AGED 65, S/O.NANCHAN,
PANAKATTIL VEEDU, VENGASSERY,
OTTAPALAM TALUK.

2. KAMALAKSHY, W/O.KOMBY, PANAKATTIL VEEDU,
VENGASSERY, OTTAPALAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.29461 of 2007

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Dated this the 4th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Exts.P4 to P6 orders passed by the Subordinate Judge's Court, Ottapalam in O.S.No.63 of 1999. The suit is one for recovery of possession on the strength of title and it is the case of the plaintiff that defendants 1 and 2 were given permission to reside in a shed in the property. They did not vacate when a request was made so and they also attempted to cut and remove the bamboo clusters and therefore, the suit was filed with a specific averment of recovery of possession from defendants 1 and 2.

2. The third defendant, according to the plaintiff, is a person, who was a henchman who had helped defendants 1 and 2. The third defendant is dead and thereafter, with a considerable delay, an application was filed with a request to the court that it is not necessary to implead the legal representatives of the deceased third defendant on the ground that no serious relief was sought against him and the juncture of his legal representatives are not necessary. The court disallowed the prayer.

3. Learned counsel for the writ petitioner submitted before me that in the proceedings, the third defendant remains ex parte and he has not contested the case and therefore, the court

should have permitted the prayer of the plaintiff applying the principles embodied in Order 22 Rule 4 of C.P.C. I find that the learned Sub Judge has not considered that aspect at all. Secondly, the plaint has to be read as a whole and it can be seen that the principle relief is sought against defendants 1 and 2 and not against the third defendant. The third defendant is only an aid of the other defendants and his junction may not be of much relevance in a suit of this nature.

4. Therefore, the matter requires reconsideration by the court below. Therefore, the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration in the light of the observations made above. The court shall fix a date for hearing, inform the defendants as well and hear the matter and dispose it of in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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